

1 or patrol officer and I was a crime scene investigator
2 and I was the coordinator of the crime scene
3 investigators. There were 28 of us, and I was the
4 liaison between the crime scene investigators and the
5 crime lab.

6 In Denver I worked as a patrol officer, a crime
7 laboratory detective, that was the forensic science
8 section of the crime laboratory where I worked in
9 serology and did blood stain pattern analysis and crime
10 scene investigation and luminol processing and some other
11 tests. I also was a patrol sergeant.

12 And then I went to the Naperville Police Department
13 where I was the forensic services manager, and I was in
14 charge of the forensic science function of the police
15 department with presenting their or responsible for crime
16 scene investigation and evidence of property management.
17 And as the forensic services manager I was also assigned
18 to assist major departments such as Chicago Police
19 Department and the Cook County Sheriff's Police, and a
20 variety of other northern Illinois agencies with major
21 cases involving crime scene reconstruction and blood
22 stain pattern analysis. And I was also a member of two
23 multi-agency task forces. One was the Lake County Task
24 Force, which I was the forensic -- the lead forensic
25 investigator, and then the DuPage County Task Force which

1 was called the Felony Investigation Assistance Team where
2 I served initially as the forensic investigation leader
3 and then eventually I was in charge of the whole unit.

4 After Naperville Police Department I went on and
5 I was police commander of both the administrative and
6 operations division of the Woodridge, Illinois Police
7 Department which included criminal investigation, crime
8 scene investigation, property in evidence and a variety
9 of other sections.

10 Q. Okay, great. Now, I want to ask you specific
11 about crime scene investigation and crime scene
12 reconstruction. What type of tests do you commonly
13 perform in conducting a crime scene reconstruction or
14 crime scene investigation?

15 A. Well, it varies and it's really dictated by a
16 couple of things; one, the type of crime and then the
17 task that I'm asked to perform. Generally what happens,
18 I am contacted by the prosecutor and asked to do a blood
19 stain pattern analysis or a shooting scene reconstruction
20 to determine whether or not -- or what actually occurred
21 and if I can arrive at a sequence of events that can be
22 validated through the evidence present. And generally on
23 defense cases I'm asked to review a case file and they
24 may have a specific area of concern whether or not the
25 determinations made by the prosecutors and investigators

1 can be validated by the evidence that they collected
2 during the course of their investigation.

3 Q. Okay. And have you performed that type of
4 review in other cases?

5 A. Yes.

6 Q. And how many cases do you think you have
7 performed that in?

8 A. Oh, it would be in excess of a hundred easily.

9 Q. Okay. And in doing, in performing your review
10 of a crime scene, do you use the same tests and reviews
11 that are normally used by others in your field?

12 A. Yes, it's standard. Basically it's obtain the
13 information, the data, review it, form a hypothesis, and
14 then test the hypothesis with the available information
15 you have and you can form your conclusions based on those
16 determinations.

17 Q. Okay. And have you testified in court as an
18 expert on crime scene reconstruction?

19 A. Yes, I have.

20 Q. How many times have you done that do you
21 think?

22 A. Well, this is the 116th time I provided expert
23 testimony.

24 Q. Okay. Let's see, are you a member of any
25 professional organizations?

1 A. Yes, I am.

2 Q. And are those just -- I guess, are they listed
3 in your CV?

4 A. They are listed on my CV.

5 Q. Okay, great. And have you taught any classes in
6 forensic science?

7 A. Yes.

8 Q. Are those also listed in your CV?

9 A. Yes, they are.

10 Q. I just want to make sure we're kind of hitting
11 all the highlights of your expertise. Okay. Now, let's
12 talk about this case specifically. Were you asked to
13 conduct a review of the evidence in the police reports in
14 a case involving Keith Carnes?

15 A. Yes, I was.

16 Q. Who contacted you about that?

17 A. A Ms. Benson who was the girlfriend of Keith
18 Carnes at the time.

19 Q. And were you ultimately retained to conduct a
20 review?

21 A. Yes, I was.

22 Q. And who retained you?

23 A. Ms. Benson on behalf of Keith Carnes.

24 Q. And did you have any contact with an attorney
25 about the case?

1 A. Yes, I did.

2 Q. Okay, and who was the attorney, do you recall?

3 A. Mr. Toney.

4 Q. Sorry, I'm taking notes, too, so if there's a
5 little delay I apologize. So Mr. Toney was the
6 attorney?

7 A. Yes.

8 Q. And did you actually communicate with Mr. Toney
9 about the case?

10 A. Yes.

11 Q. Did he provide you with any materials?

12 A. Yes, he did.

13 Q. And what materials do you recall him providing
14 you with?

15 A. He gave me a variety of police reports and the
16 autopsy report and some photos as I recall.

17 Q. Okay, all right. And then when exactly do you
18 recall conducting this review?

19 A. I can't tell you exactly. My best guess is in
20 the year 2005. That's when I think it was.

21 Q. Okay. If your report is dated June 25th of
22 2006, does that give you any, I don't know, I guess
23 context?

24 A. It could have been that I was contacted sometime
25 in 2005 by Ms. Benson, because this went on for a while,

1 so I initially tried to talk her out of retaining me
2 because I thought it was more appropriate to be retained
3 by the attorney, and I told her to contact Mr. Toney and
4 have him contact me if he needed me. I didn't get any
5 response back, and then she called back and pleaded and
6 eventually I agreed to do it. So my guess is that the
7 initial contact occurred sometime in the end of 2005, and
8 if I did the report in 2006, June, then that's when I
9 would have probably done the report.

10 Q. Okay. And you indicated you got the police
11 reports, the autopsy report and photographs from
12 Mr. Toney?

13 A. Yes, my recollection is that he said he sent me
14 everything he had.

15 Q. Okay. And did you conduct any tests on any
16 materials?

17 A. No.

18 Q. Okay. So essentially your review was based on
19 the reports that had already been generated? I'm sorry,
20 are you there?

21 A. Yes.

22 Q. I think I talked over your answer.

23 A. That's correct. The work I performed was a
24 review and evaluation of the police reports and
25 evaluation of the physical evidence that was reflected in

224

1 the reports and the scene comported with the
2 determinations made by the police in their investigation
3 of the incident.

4 Q. Okay. And did you reach any conclusions?

5 A. Yes, I did.

6 Q. And that was based on your review of all those
7 materials?

8 A. Yes.

9 Q. And what conclusions did you reach?

10 A. Well, let me take a step back if I may.

11 Q. Okay.

12 A. I was asked initially to look at the blood stain
13 patterns that were located in the photos of the decedent
14 in the parking lot of the restaurant and see if I could
15 determine if the blood stains were consistent with
16 someone standing over him and shooting him while they
17 were standing over him. What I determined from that was
18 that there had not been any photographs taken of the
19 blood stain patterns prior to the blood stains being
20 covered with blue absorbent chux, so those chux would
21 have distorted or contaminated those stains for any
22 possible evaluation.

23 So the next thing I did was to look at the
24 description of the wounds of the decedent and see whether
25 or not those wounds and the evidence that was or was not

1 collected at the scene was consistent with someone
2 standing over the decedent and shooting them while
3 standing over them while the decedent was on the
4 ground?

5 Q. So I guess what I hear you saying is the purpose
6 that you were originally retained for was just to look at
7 the blood stain patterns?

8 A. That's correct.

9 Q. And since that was not a viable -- would you say
10 a viable thing to look at or --

11 A. It was not possible to do a blood stain pattern
12 reconstruction because the stain patterns had been
13 covered and essentially contaminated by whoever put the
14 blue absorbent chux over them and basically the stains
15 were never documented prior to doing that or at least I
16 wasn't presented with any photos of the documentation
17 prior to them being placed on the stains. So I couldn't
18 do what I was asked to do based on the material that I
19 was given.

20 Q. So essentially since that kind of pathway was
21 kind of impeded, you decided to take a different path to
22 look at what happened at the crime scene?

23 A. Yes, and I also think that was another question
24 that was posed in the, you know -- you know, my
25 recollection of it is that the police alleged that the

shooter was standing over the victim and shot the victim while the victim was on the ground. Does the evidence contained in the report support that conclusion. So I had to look at the material and make a determination to that point.

Q. Okay. And were you able to reach a conclusion based on that examination or that review?

A. Yes.

Q. Okay, so you were. And what conclusion did you reach based upon the review of the other evidence in the case?

A. Well, the question was whether or not again the shooter was standing over the decedent and shot the decedent while the decedent was on the ground, and what I determined was that based on the evidence that was looked at, there was no evidence which would support that conclusion. And that was based on the angles of the bullets as described in the autopsy report, the appearance of the wounds, particularly the head wound and the location of the head wound and the absence of any cartridge case or bullets on or about the body or on the ground surrounding the body or any documentation of any bullet fragments or concrete or asphalt material that might have been dislodged as a result of a bullet passing through the body. In essence, there was no evidence

1 present that you would expect to see had a weapon been
2 fired downward into the ground or into the body of this
3 individual.

4 Q. Okay. And did you examine the police reports as
5 to whether there were any shell casings also found on the
6 parking lot where the decedent's body was found?

7 A. Yes, I did.

8 Q. And what kind of evidence did you find as far as
9 that was concerned?

10 A. There were no shell casings.

11 Q. Okay. And did that support your conclusion then
12 that the shooting couldn't have taken place there?

13 A. Yes.

14 Q. Okay. And am I stating your conclusion
15 properly, that your conclusion was that nobody -- that
16 the decedent was not actually shot while he was lying on
17 the parking lot?

18 A. I'm saying that there's no evidence to support
19 that at all.

20 Q. I'm sorry, yeah, that the evidence does not
21 support the finding that he was shot on the parking
22 lot?

23 A. The conclusion was that someone -- the
24 allegation was and the conclusion by the police as
25 reflected in their report was that someone was standing

1 over the decedent and shooting the decedent on the
2 ground. I looked at it, looked at the wounds, the
3 appearance of the wounds, the bullet path through the
4 body, and of course you're looking for ejected cartridge
5 cases and bullets, and none of those items were present,
6 which, you know, you can't have a shooting with a
7 semi-automatic weapon without those types of evidence
8 present.

9 Q. Okay. And I was going to ask you about that.
10 Do you remember what kind of weapon the police reports
11 indicated might have been involved?

12 A. It was -- my recollection was it was a
13 semi-automatic rifle or a handgun. The one witness said
14 it was a long gun or a rifle or a semi-automatic handgun.
15 She wasn't quite sure which one it was. But my
16 recollection is it was black and it was a long gun.

17 Q. And do you recall whether there was any weapon
18 identified as the weapon used to inflict the wounds to
19 the decedent?

20 A. No, I never was able to determine that they were
21 able to make that determination.

22 Q. Okay. And what do you recall as to the distance
23 at which the wounds were inflicted on the decedent?

24 A. My recollection from the autopsy report, that
25 the pathologist stated that they were distance wounds.

1 Q. Okay. And would that have been consistent with
2 having been generated by gunfire close to the decedent?

3 A. No.

4 Q. Okay. So if the person had been standing
5 directly over the decedent, would you have expected it to
6 be a distance wound?

7 A. Well, a distance wound is one that's basically
8 classified as exceeding 48 inches or beyond, so that's
9 four feet. And you would also expect to see at that
10 point some soot or tattooing and none of that was present
11 either. But if you have a shoulder weapon or a long
12 rifle, I can't imagine someone holding it up four feet
13 above the ground to fire into it. But nevertheless,
14 whether it was a rifle, shoulder weapon or a handgun, the
15 fact that there were no bullets or bullet fragments or
16 shell cases around, in my estimation based on the
17 evidence I reviewed precludes the possibility of someone
18 standing over him and shooting him.

19 Q. All right. And were you able to find whether
20 there was any physical evidence that would directly link
21 Mr. Carnes to shooting the decedent while he was laying
22 in the parking lot?

23 A. Well, I didn't see any evidence that linked
24 Mr. Carnes to the shooting at all.

25 Q. And what did you base that on?

1 A. The review of the materials that I was given.

2 Q. All right. And I just -- we have your report
3 here as Movant's Exhibit No. 2, and it's dated June 25,
4 2006. Is that the report that you actually generated in
5 response to this request by Ms. -- I forget her name
6 already -- by Ms. Benson and Mr. Toney?

7 A. Yes, this was -- yeah, it was June 25th, 2006,
8 and that was delivered to Mr. Toney or sent and mailed to
9 Mr. Toney.

10 MS. HOGAN: And we'll go ahead and admit
11 that as Movant's Exhibit 2 I guess for purposes of the
12 deposition.

13 Q. (By Ms. Hogan) Now, you said you mailed that
14 report to Mr. Toney?

15 A. I'm pretty sure I mailed that. It could have
16 been faxed but I'm almost positive I mailed it.

17 Q. Did you also send a copy to Mr. Carnes?

18 A. I sent it to I think Ms. Benson for him.

19 Q. Okay. Do you not -- were you ever asked to do
20 this review before Mr. Carnes went to trial?

21 A. The request for my assistance came between the
22 first and the second trial.

23 Q. Okay. All right. When did you conduct your
24 actual analysis in relationship to the second trial?

25 A. Well, it would have been, as we mentioned

1 previously, sometime between -- by my recollection
2 sometime between December of 2005 and June of 2006.

3 Q. Okay. So do you have any knowledge as to
4 whether the case, whether you were retained before a
5 trial was actually had on behalf of Mr. Carnes?

6 A. Well, I know that I was -- I was asked if I
7 would be available to travel to Kansas City to testify,
8 and I had made myself available, and I want to say it was
9 a September date but I can't be sure. But they were,
10 they being Ms. Benson and a friend of Mr. Carnes and I
11 have forgotten his name, were both trying to get Mr.
12 Toney to speak to me and to get me to testify, and I was
13 having trouble making contact with Mr. Toney. He
14 wouldn't return my phone calls or e-mails. He finally
15 did call me and then we had a discussion about the case
16 and what Ms. Benson and others' expectations were of me,
17 and I told Mr. Toney the kind of things I could do and
18 that I was available for testimony, and then he said,
19 okay, I'll send you the stuff, and he eventually sent it
20 to me. But I just had a sense that his trial strategy in
21 my opinion wasn't, didn't include my testimony and I was
22 never called.

23 Q. Okay. And that's the big question. Before
24 giving this deposition today, were you ever called to
25 testify on behalf of Mr. Carnes?

1 A. No.

2 Q. And so you didn't testify at his trial for first
3 degree murder then?

4 A. No.

5 Q. Would you have been willing to testify at that
6 trial if you had been retained in time to testify at that
7 trial?

8 A. As a matter of fact I was retained in time for
9 the second trial. Is that what you're talking about?

10 Q. Well, were you ever asked to testify at the
11 second trial?

12 A. By Ms. Benson and Mr. Carnes, yes.

13 Q. Okay. But not by counsel?

14 A. No.

15 Q. Okay. Let me catch up my notes real quick here.
16 And if Mr. Toney had asked you to testify on behalf of
17 Mr. Carnes, would you have made yourself available?

18 A. Yes, I had blocked it out, I was ready to go.

19 Q. And would your opinion have been any different
20 if you had been asked to review the evidence and the
21 reports at sometime earlier than the trial?

22 A. No.

23 Q. Okay. So if you had been called to testify at
24 the trial, would your opinion have been the same as it is
25 today?

1 A. Yes.

2 Q. Would your testimony have been the same as it is
3 today?

4 A. Yes.

5 MS. HOGAN: Okay. I don't think I have
6 anything further. The prosecutor is here and she's going
7 to cross-examine you.

8 EXAMINATION BY MS. PARSONS:

9 Q. Mr. Rini, we actually spoke a couple years ago.
10 I think you and I talked about whether you were
11 testifying or not; do you remember that conversation with
12 me?

13 A. I'm sorry, you were garbled.

14 Q. I'll move the phone around. Can you hear me
15 now? Can you hear me?

16 A. Yes, I can.

17 Q. Okay. It sounded like a phone commercial. Do
18 you remember talking to me about your testimony? I think
19 I called you prior to trial or prior to the Motion For
20 New Trial?

21 A. What is your name?

22 Q. Dawn Parsons.

23 A. I do recall talking to someone, yes.

24 Q. You had told Ms. Hogan that Ms. Benson, the
25 girlfriend of the Defendant, contacted you?

1 A. Right.

2 Q. Do you remember the exact date?

3 A. No, I do not.

4 Q. Do you have any time -- do you have any idea of
5 what time of what month?

6 A. No, no. Again, to the best of my recollection
7 it would have been somewhere around December I am
8 thinking. And the reason I say that is because of the
9 time frame between the initial contact and the generation
10 of the report and all of the machinations that occurred
11 between that where I was speaking to her, trying to get
12 ahold of Mr. Toney, speaking with Keith Carnes, speaking
13 with his friend, trying to get ahold of Mr. Toney again.
14 There was a lot of stuff that was going on prior to me
15 writing this report.

16 Q. Okay. Do you remember when Ms. Benson contacted
17 you what the context of your conversation was or what she
18 was telling you?

19 A. Well, she needed a crime scene expert, she
20 wanted to retain me because she wasn't happy with the
21 fact that Mr. Toney hadn't provided them with someone who
22 could look at the material and reconstruct it, and those
23 are my words, not hers. But essentially she was looking
24 for someone with my background to assist with Mr. Carnes'
25 defense.

1 Q. Did you know at the time you spoke with Ms.
2 Benson what procedural posture the case was in?

3 A. No, I did not. In fact, I do recall previously
4 I tried to talk her out of retaining me and told her to
5 contact the attorney, I didn't know it was Mr. Toney at
6 the time, but to contact Mr. Toney, give him my CV,
7 express her concerns, and have him contact me if he
8 should need me because -- for the reason we're going over
9 now, I think it's more appropriate that the attorney
10 contact, you know, any experts to see whether or not they
11 actually need them or want them or can afford them or
12 whatever.

13 Q. So did you know that a jury had convicted
14 Mr. Carnes of murder in the first degree?

15 A. I did. Well, I did remember that he was
16 convicted. The second trial, that was a bench trial.
17 Was that a bench trial, the second trial?

18 Q. Correct.

19 A. But I didn't know that right off the bat. That
20 might have -- you know, I did learn that sometime between
21 the initial conversation and the subsequent or
22 preparation of the report.

23 Q. So to the best of your recollection you believe
24 your contact with Ms. Benson was in December of 2005?

25 A. That's my best recollection.

1 Q. When you finally got the information from
2 Mr. Toney, do you remember exactly what you got?

3 A. The paperwork, the documentation?

4 Q. Yes.

5 A. Police reports, crime scene reports,
6 photographs, autopsy report, statements, those type of
7 material. As I recall, he said I'll send you everything
8 I have.

9 Q. Do you know if you received any deposition
10 transcripts of the eye witnesses?

11 A. I think I -- I believe I did.

12 Q. Do you know if you received any trial
13 transcripts of the eye witnesses?

14 A. I'm thinking I did but I can't be sure. I do
15 remember reading extensively the three female
16 witnesses.

17 Q. And when you talked to Mr. Toney eventually, you
18 talked about you didn't think that his trial strategy
19 involved your testimony. What gave you that
20 impression?

21 A. He wasn't excited about it. He had some other
22 comments he made about Ms. Benson and the situation he
23 had and the financial support he had or didn't have at
24 the time. And I think he was pretty much committed to
25 his trial strategy and it didn't include someone like

1 myself.

2 Q. Do you know what his trial strategy was?

3 A. I think -- this is my opinion based on our
4 conversations -- is that --

5 MS. HOGAN: Excuse me, Mr. Rini. Just for
6 the record I'm going to go ahead and object to the
7 speculation, but you can go ahead and finish answering.

8 A. I can't speculate, you're right, I'm sorry.

9 Q. (By Ms. Parsons) But you can go ahead and
10 speculate for purposes of the deposition. So what do you
11 think his trial strategy --

12 A. My belief based on our conversations, the only
13 evidence or I guess evidence that the prosecution had was
14 based on three eye witnesses' testimony, and Mr. Toney
15 told me how he when he was a United States Attorney was a
16 member of the National Institute of Justice Committee
17 that established eye witness testimony procedures, and he
18 reflected on that process and we had a long discussion
19 about the value of eye witness testimony, particularly of
20 individuals who were under the influence of drugs or
21 alcohol. And so he -- my memory is that the three
22 eyewitnesses were admitted crack cocaine users and
23 apparently were using at the time of the incident, and so
24 I think, as I recall, his strategy was to discredit those
25 three witnesses as not being reliable witnesses. That's